

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

JUL 18 2013

JAMES W. McCORMACK, CLERK
By: Sawo **DEP CLERK**

TERRY CHAMPLIN

PLAINTIFF

vs.

No. CIV 4:13 cv 413 KGB

THE UNITED STATES OF AMERICA

DEFENDANT

COMPLAINT

Comes Plaintiff, Terry Champlin, by and through counsel, The Brad Hendricks Law Firm,
and for his Complaint, states: This case assigned to District Judge Buxer
and to Magistrate Judge Deere

1. Plaintiff was all times relevant hereto a resident of Austin, Lonoke County, Arkansas.

The negligent act complained of herein also occurred in Pulaski County which is in the Western Division of the Eastern District. Thus venue is proper in this court pursuant to 28 U.S.C. §1402(b).

2. Defendant operates a the United States Postal Service ("USPS"), and specifically a mail facility in North Little Rock, Arkansas through which it employs dozens of people, including an unnamed negligent employee who was at all times described herein operating in the course and scope of his employment with the USPS

3. This Court has jurisdiction under 28 U.S.C. §1346.

4. This is a negligence case involving personal injury to Plaintiff caused by an employee of the USPS as more fully described herein and is brought under the Federal Tort Claims Act, 28. U.S.C. §2671, *et. seq.* On or about 12/31/2012 Plaintiff presented a claim to the USPS via Form 95 in writing as evidenced by Exhibits 1 & 2 attached hereto. That claim was received by the USPS on January 2, 2013, and thus Defendant had six months to accept or deny the claim, after which it

would be deemed denied. . The six (6) month period has run and thus the claim is deemed denied and therefore Plaintiff initiates this action under the FTCA.

5. On April 21, 2012, Plaintiff was in the USPS mail facility in North Little Rock on East McCain. While walking through west dock (Plaintiff is an employee of a USPS contractor), Plaintiff's right foot was run over by a fork lift driven employee of the USPS, resulting in significant injury to the Plaintiff, specifically a 4 broken metatarsals and a blow to the head..

6. The employee of the USPS, while in the course and scope of his employment with the USPS, in causing the above described injury, was negligent in the following respects:

- a. failure to properly and safely operate a forklift;
- b. failing to maintain a proper lookout; and,
- c. otherwise failing to exercise reasonable care in the operation of a fork lift.

7. As a proximate result of the negligence of Defendant, imputed to it by the actions of its employee, the Plaintiff has sustained the following injuries and damages:

- a. permanent physical injury;
- b. pain, suffering and mental anguish experienced in the past and reasonably certain to be experienced in the future;
- c. medical expenses incurred in the past and reasonably certain to be incurred in the future.
- d. lost wages.

8. With respect to all claims of the Plaintiff, the Defendant's agent, servant and employee was at all times acting within the scope of his employment with the Defendant, under circumstances where Defendant, if a private person, would be liable to the Plaintiff in accordance with the law and pursuant to the Federal Tort Claims Act.

WHEREFORE, Plaintiff prays that upon trial of this matter Plaintiff be awarded judgment against the Defendant, together with costs, pre-judgment interest until paid, and for all other relief to which Plaintiff may be entitled

Respectfully submitted,

THE BRAD HENDRICKS LAW FIRM

500 C Pleasant Valley Dr.

Little Rock, AR 72227

(501) 221-0444

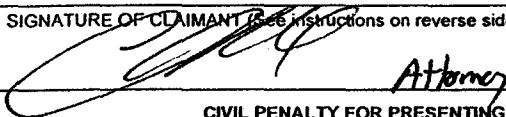
(501) 661-0196 (fax)

BY:



Christopher R Heil

A.B.N. 92128

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: United States Postal Service Attn: Tami Risk, USPS Tort Claims Coordinator 420 Natural Resources Drive Little Rock, AR 72205-9331			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. Terry Champlin 5087 Hwy 319 West Austin, AR 72007 Christopher Heil, Atty 500 C Pleasant Valley Dr Little Rock, AR 72227		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 09/02/1960	5. MARITAL STATUS M	6. DATE AND DAY OF ACCIDENT 04/21/2012 Saturday	7. TIME (A.M. OR P.M.) 3:30 a.m.	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Claimant was walking down the west dock of the USPS mail facility on E. McCain in North Little Rock, AR, when he was hit by a fork lift driven by USPS employee, causing injury to his right foot and to his head.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. Fractures of the 1st through 4th metatarsals of the right foot; abrasion to head. \$10,211 in medical bills and \$24,427 in lost wages to date. <i>See attached documentation</i>					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
12. (See instructions on reverse).					
AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY 250,000.00	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights). 250,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).  CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM			13b. PHONE NUMBER OF PERSON SIGNING FORM 501-221-0444	14. DATE OF SIGNATURE 12/31/2012	
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☒ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

Worker's Compensation: Specialty Claims Services, Inc., P.O. Box 15550, Little Rock, AR 72231; Adjuster James Chancellor: 501-945-4405 ext 108.

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☒ Yes ☐ No

17. If deductible, state amount.

0.00

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

Worker's Compensation claim has been opened and is paying medical bills and temp disability.

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.

C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

LAW DEPARTMENT
NATIONAL TORT CENTER



January 14, 2013

The Brad Hendricks Law Firm
Attn: Christopher R. Heil
500 C Pleasant Valley Drive
Little Rock, AR 72227

Re: Your Client: Terry Champlin
Date of Incident: April 21, 2012
USPS File No.: NT201310337

Dear Mr. Heil:

Please be advised that the administrative claim filed on behalf of Terry Champlin with the United States Postal Service on January 2, 2013 has been assigned to my office for adjudication.

I am currently in the process of reviewing this claim in order to make the determination as to any legal liability on the part of the Postal Service for the injuries sustained by your client. This claim will be adjudicated as soon as possible, but be aware that the Postal Service has six months from January 2, 2013 in which to adjudicate this claim. Should you have any additional information you wish to submit that would be helpful in the review of this matter, please forward same to my attention at the National Tort Center, United States Postal Service, 1720 Market Street, Room 2400, St. Louis, Missouri 63155-9948.

Sincerely,

A handwritten signature in cursive script that reads "Brittany Lindsay".

Brittany Lindsay
Tort Claim Adjudicator

cc: Tami Risk
Tort Claim Coordinator
File No. 720-12-0149A

1720 MARKET STREET, ROOM 2400
ST. LOUIS, MO 63155-9948
TEL: 314/345-5820
FAX: 314/345-5893

